



BEFORE THE ARIZONA CORPORATION COMMISSION

**WILLIAM A. MUNDELL**  
Chairman  
**JAMES M. IRVIN**  
Commissioner  
**MARC SPITZER**  
Commissioner

Arizona Corporation Commission

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**IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996**

**Docket No. T-00000A-97-0238**

**AT&T'S RESPONSE TO QWEST  
CORPORATION'S MOTION TO  
SUPPLEMENT BRIEFING  
REGARDING DARK FIBER  
IMPASSE ISSUE DF-1**

AT&T Communications of the Mountain States ("AT&T") objects to Qwest Corporation's ("Qwest") motion to file supplemental briefing and to supplement the record on dark fiber impasse issue DF-1 with an affidavit at this late date. To support its untimely filing, Qwest argues that it was surprised by AT&T's legal arguments. Qwest's claim is ridiculous; furthermore, Qwest provides no basis to allow it to supplement the record now.

First, AT&T argued all along during the dark fiber workshops that it believed that Qwest's unbundling obligations extended to its affiliates. There was no obligation on AT&T to disclose each and every piece of legal authority to support its legal argument during the workshops.<sup>1</sup> Legal arguments are reserved for briefing. If Qwest believed that it needed to introduce evidence in the record to support its position on this argument, it was obligated to present that evidence during the workshops.

<sup>1</sup> Qwest "assumed" that because AT&T did not provide its legal theories or authorities during the workshop, AT&T had none. This was simply bad judgment and a mistake on Qwest's part and does not serve as a legal basis for a motion. Qwest's motion at 2.

The fact is that Qwest had not done its homework on this issue prior to reading AT&T's brief. The authority cited by AT&T was equally available to Qwest. Qwest should have prepared the record during the workshops to deal with this issue if it believed that record evidence was necessary.

Second, Qwest has repeatedly insisted during these workshop sessions that parties present all of their evidence on a particular issue at the time that the issue is discussed, in any event, before the close of the workshop on a particular issue.<sup>2</sup> With regard to dark fiber, Qwest even insisted that the parties brief this specific issue earlier than the other issues involved in the emerging services workshop because the issue was closed. Moreover, in discussions on procedure in Arizona, Qwest vehemently opposed reply briefs. *See, for example*, Mr. Charles Steese's e-mail dated February 21, 2001. If Qwest wants other parties to be bound by particular procedural rules, rules it insisted on, it must be willing to be bound by the same rules. It is ironic that Qwest's problem is a result of Qwest's insistence that the section 271 process proceed at Qwest's pace at any cost, unless it disadvantages Qwest.<sup>3</sup>

Third, the argument set forth by AT&T in its brief on this issue is a legal argument. The Commission is able to decide the issue without additional unnecessary factual support. The authority cited by AT&T is dispositive.

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<sup>2</sup> Qwest does not allege that the evidence it seeks to admit was not available before the workshop was closed on this issue.

<sup>3</sup> Qwest has repeatedly attempted to impose schedules that are unreasonable and place unnecessary burdens on the parties and Staff. It is only reasonable to assume the parties would ultimately suffer by Qwest's unreasonable proposals. In this case, Qwest got bit by its own dog.

For these reasons, the Commission should reject Qwest's attempt to file untimely legal argument and factual support for its position on whether its affiliates are obligated to comply with section 251 and 252 interconnection and unbundling obligations.<sup>4</sup>

Dated this 26<sup>th</sup> day of March 2001.

**AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC.**

By:



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<sup>4</sup> If, despite these arguments and over AT&T's objections, the Commission decides to permit Qwest to supplement the record at this late date with additional evidence and briefing, at a minimum, the Commission should ensure that other parties are provided due process. That is, the record should be reopened to discovery on the facts presented in the affidavit, supplemental factual evidence by other parties, cross examination and supplemental legal arguments. Also, additional workshop dates must be scheduled to discuss these issues. Qwest cannot object to these due process protections because it is Qwest that wants to ignore the rules that were adopted at its insistence, to the disadvantage of the other parties.

## CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Response to Qwest Corporation's Motion to Supplement Briefing Regarding Dark Fiber Impasse Issue DF-1 in Docket No. T-00000A-97-0238 were sent by overnight delivery on March 26, 2001 to:

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